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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 PATRICK N. LOWDEN and CHRISTI
11 LOWDEN,

12 Plaintiff,

13 vs.

14 MAGGIE MILLER-STOUT, et al,

15 Defendant.
16

Case No. C08-5365 BHS/KLS

REVISED ORDER (DKT #22)
RENOTING MOTION TO
DISMISS AS A MOTION FOR
SUMMARY JUDGMENT

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18 In accordance with Federal Rule of Civil Procedure 12(d), please be advised that Defendants' motion
19 to Dismiss (Dkt. 3) shall be treated as a motion for summary judgment, Plaintiffs are further advised as
20 follows:

21 A motion for summary judgment under Rule 56 of the Federal Rules
of Civil Procedure will, if granted, end your case.

22 Rule 56 tells you what you must do in order to oppose a motion for summary
23 judgment. Generally, summary judgment must be granted when there is no genuine
24 issue of material fact – that is, if there is no real dispute about any fact that would
25 affect the result of your case, the party who asked for summary judgment is entitled
26 to judgment as a matter of law, which will end your case. When a party you are
suing makes a motion for summary judgment that is properly supported by
27 declarations (or other sworn testimony), you cannot simply rely on what your
28 complaint says. Instead, **you must set out specific facts in declarations,
deposition, answers to interrogatories, or authenticated documents, as provided**

1 in Rule 56(e), that contradict the facts shown in the defendant's declarations
2 and documents and show that there is a genuine issue of material fact for trial.
3 If you do not submit your own evidence in opposition, summary judgment, if
appropriate, may be entered against you. If summary judgment is granted,
your case will be dismissed and there will be no trial.

4 *Rand v. Rowland*, 154 F.3d 952, 962-963 (9th Cir. 1998) (emphasis added).

5 Furthermore, Local Rule CR 7(b)(4) states that a party's failure to file
6 necessary documents in opposition to a motion for summary judgment may be
deemed by the court to be an admission that the opposition is without merit.

7 In light of the fact that the Plaintiff filed materials which required this Court to convert the
8 Defendants' Motion to Dismiss into a Motion for Summary Judgment, the Defendants should be provided
9 with an opportunity to file a response to the Plaintiffs' new materials. The Plaintiffs can then file a reply and
10 the Defendants a final response.

11 As Defendants' motion to dismiss has been converted, the Court directs that they shall serve an answer
12 to Plaintiff's complaint.

13 Accordingly, it is **ORDERED**:

14 (1) Defendants shall serve an answer to Plaintiffs' complaint within **twenty (20) days** from the date
15 of this Order;

16 (2) Defendants' Motion to Dismiss (Dkt. #3) shall be **RENOTED as a Motion for Summary**
17 **Judgment for November 7, 2008**;

18 (3) Defendants' response shall be due on **October 24, 2008**; Plaintiffs' reply, if any, shall be due on
19 **November 3, 2008**; and Defendants' final response shall be due **November 7, 2008**;

20 (4) The Clerk of the Court is directed to send copies of this Order to counsel of record and to both
21 Plaintiffs.

22 DATED this 30th day of September, 2008.

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25 Karen L. Strombom
26 United States Magistrate Judge

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